

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

215

CWP-6419-2018 (O&M)
Date of decision: 23.01.2024

Suraj Kali

...Petitioner

VERSUS

Bimonthly Lok Adalat and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. D.K. Parjapati, Advocate for the petitioner.

Mr. Vinod Gupta, Advocate for respondent No.4.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 11.11.2017 passed in the Bimonthly Lok Adalat in FAO-4177-2013 titled as '**Suraj Kali Vs. M/s. Vikram Bus Services & ors.**'.
2. Learned counsel for the petitioner contends that Vinod Kumar (since deceased), son of the petitioner, died in a motor vehicle accident on 15.05.2011 at a young age of 21 years. He was on his way along with one Jasbir Singh in a Car bearing registration No. PB-13Y-2397 from Mandi Ahmedgarh to Kotkapura and one Jasbir Singh was driving the said car at a moderate speed and on the correct side of the road. At about 9.30 a.m., when they reached near place of Baba Vadhbhag Singh after crossing Smalsar, a bus bearing registration No. PB-29K-9192 came from the opposite

side. The said bus was being driven in a rash and negligent manner. The same hit against the car driven by Jasbir Singh. Vinod Kumar received multiple grievous injuries on his body and he died as a consequence thereof on 15.05.2011. An FIR qua the said accident was also lodged. A claim was later filed by the petitioner before the Motor Accident Claims Tribunal (MACT), Ludhiana. After consideration of all the evidence brought before the MACT, Ludhiana, a compensation of Rs.4,25,000/- was awarded to the petitioner-claimant vide award dated 12.02.2013.

3. Aggrieved thereof, the first appeal bearing No. FAO-4177-2013 was preferred before this Court. The said appeal was listed before the Bimonthly Lok Adalat wherein the same was disposed of after awarding an enhanced sum of Rs. 1,90,000/-, over and above the amount awarded by the MACT, Ludhiana, vide its order dated 11.11.2017. The operative part thereof reads thus:-

“xxx

As agreed, as per statements of the representative of the Insurance Company and counsel for the appellant, (separately recorded today), a sum of Rs. 1,90,000/- (One Lakh Ninty Thousand Only) more, over and above the amount awarded by the Tribunal, is awarded as enhanced compensation to the appellant, in full and final settlement of the claim in this appeal. As per the statement of learned counsel for the appellant the enhanced amount would be paid to the appellant-Suraj Kali.

We dispose of this case with a direction to the Insurance Company to deposit a crossed-cheque in the sum of Rs. 1,90,000/- in the name of appellant Suraj Kali wife of Ram Kishan with the office of the Lok Adalat of the High Court on or before 22.12.2017 failing which the amount will carry 9% interest p.a. from the date of this order till the cheque is deposited with the office of the Lok Adalat. The appellant's counsel/appellant my collect the cheque from the office.

Copy of the order be supplied/sent to the counsel/parties and file be returned to the High Court. xxx”.

4. The above said agreed award passed in the Bimonthly Lok Adalat has now been challenged by the petitioner by means of the present writ petition.

5. Learned counsel appearing on behalf of the petitioner has raised the following arguments:-

(i) That the award passed by the Bimonthly Lok Adalat is without any consent of the claimant and that the party was mandatorily required to be heard in terms of Section 20 of the Legal Services Authorities Act, 1987 (hereinafter referred to as 'Act of 1987'). Since the statement of the party was not recorded, hence, the award could not have been passed by the Bimonthly Lok Adalat;

(ii) That the learned counsel appearing on behalf of the

petitioner in the first appeal has consented on a very meager sum which has caused much prejudice and that the petitioner was entitled to a higher amount.

6. In support of his arguments, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of '**Himalayan Cooperative Group Housing Society Vs. Balwan Singh**' reported as **2015 AIR (Supreme Court) 2867** as well as judgment passed by this Court in the matter of '**Sewa Singh Vs. The Daily Lok Adalat (Bench No.1), Punjab and Haryana High Court, Chandigarh and others**' passed in CWP-7344-2011 on 14.10.2015.

7. No other argument has been raised by the learned counsel for the petitioner.

8. Learned counsel appearing for respondent No.4 on the other hand, contends that FAO-4177-2013 was disposed of on 11.11.2017 in the Bimonthly Lok Adalat with the consent of the representative of the insurance company and on the basis of statement of counsel for the petitioner-appellant recorded separately on that day itself. The respondent-Insurance company was directed to deposit a crossed-cheque in the sum of Rs. 1,90,000/- in the name of the petitioner-appellant (Suraj Kali) with the office of the Lok Adalat. He further contends that the power of attorney in favour of the learned counsel representing the petitioner-appellant therein was duly executed by her. The present petition is thus not maintainable and deserves dismissal.

9. I have heard learned counsel appearing on behalf of the

respective parties and have gone through the documents appended with the present writ petition.

10. A specific query was put to the learned counsel for the petitioner as to whether the power of attorney executed in favour of learned counsel appearing on behalf of the petitioner in the first appeal against the order passed in FAO-4177-2013 contained a Clause by virtue whereof, the counsel could make a statement on behalf of the petitioner and/or to enter into any settlement for and on her behalf or not. Counsel for the petitioner is not in a position to dispute that the aforesaid authority was conferred upon the counsel who represented the petitioner in the first appeal FAO-4177-2013 and had appeared in the proceedings before the Bimonthly Lok Adalat as per the power of attorney. The original power of attorney, the execution whereof is not denied or disputed, has also been perused after summoning the record of FAO-4177-2013. The relevant extract of the said power of attorney executed in favour of the counsel reads thus:- defiance

“xxx

3. To withdraw or (sic.) compromise the said case or submit to arbitration (sic.) any differences (sic.) or disputes that shall arise touching (sic.) or in any manner relating to the said (sic.) case.

xxx”

11. Further, learned counsel for the petitioner was confronted with the statement of the Advocate representing the petitioner recorded by the

Bimonthly Lok Adalat on 11.11.2017, which reads thus:-

**“BEFORE THE BIMONTHLY LOK ADALAT,
PUNJAB AND HARYANA HIGH COURT, CHANDIGARH**

F.A.O. 4177 of 2013

Suraj Kali **Appellant(s)**

Vs.

M/s Vikram Bus Service **Respondent(s)**

**Statement of Sh. _____, Advocate, counsel for the
appellant/appellants.**

**On the instructions of my client(s) I am prepared to
accept Rs. 1,90,000/- (Rupees One Lac Ninety Thousand only)
over and above the amount already awarded by the MACT.
This would be in full and final satisfaction of the claim of the
appellant(s) in the appeal. The enhanced amount may be paid
to appellant No. _____**

RO & AC **Sd/-
(Gurvinder Singh Gill)
President**

**Sd/-
SIGNATURES:
Chandigarh
Dated** **Sd/-
(Aman Dhir)
Member**

xxx”

12. It is specifically stated in the aforesaid statement was duly signed by the learned counsel appearing on behalf of the petitioner that he was on instructions of his client to accept a sum of Rs. 1,90,000/- over and

above the amount already awarded by the MACT, Ludhiana. Hence, not only was the counsel representing the petitioner authorised by the power of attorney executed by the petitioner in his favour to enter into a settlement or compromise the matter, he was also on specific instructions to accept a sum of Rs.1,90,000/- over and above the amount already awarded by the MACT, Ludhiana.

13. The counsel was further confronted as to whether any proceeding had been initiated by the petitioner against the counsel representing her before the Bimonthly Lok Adalat for having made a statement without any instructions and authorization, learned counsel for the petitioner contends that no such proceedings before any Criminal Court or before the Bar Council of India for a misconduct have been initiated by the petitioner against the counsel representing her in the proceedings in FAO-4177-2013 before the Bimonthly Lok Adalat.

14. Hence, taking into consideration the specific authorisation in favour of the counsel, as per the power of attorney in his favour, coupled with his statement as extracted above and in the light of the inaction by the petitioner against her counsel for allegedly having made any wrong statement lead to an inference that the statement was made on specific instructions and was approved by the petitioner.

15. It is well recognized in law that a pleader has actual though implied authority to act by way of compromising a case in which he is engaged even without specific consent from his client, subject to:

- (1) he must act in good faith and for the benefit of his client

otherwise the power fails and

- (2) it is prudent and proper to consent his client and take his consent, if there is time and opportunity.

16. The Hon'ble Supreme Court held in the matter of **Jamilabai Abdul Kadar vs. Shankarlal Gulabchand and Ors.** reported as **AIR 1975 S.C. 2202**, that where the pleader has acted substantially with the knowledge of and encouraged by his client. Once a broad sanction for compromise came from the client, no shady action was imputable to the pleader and his conduct has been motivated by the good of the client. It could not be said that the implied authority of the pleader was abused.

17. It was held by the Hon'ble Supreme Court in the matter of **Janki Vashdeo Bhojwani and Anr vs. Indusind Bank Ltd. and Ors.,** reported as **AIR 2005 S.C. 439**, that an attorney holder is empowered to act on behalf of the principal the word 'acts' employed in Rules 1 and 2 confines only in respect to the 'act' done by the P.O.A. holder in exercise of power granted by the instrument.

18. Thus, the Court recognizes the authority of a lawyer to settle a case by way of a compromise, even if there is no such express clauses, subject to the tests above mentioned, whereas in the present case the P.O.A. specifically had a clause authorizing the advocate to compromise the matter. His statement was recorded to the effect he sought specific instructions and has also not taken any action against his advocate, which establishes that there was a consent to such settlement and compromise.

19. The matter is also being examined from the other perspective

and the law relied upon by the petitioner and the provisions of the P.O.A. Act and the effect of the substantive provisions contained therein.

20. Reliance had been placed on the judgment passed in case of ‘Himalayan Cooperative Group Housing Society’ (supra) by the petitioner. The above said judgment however is not applicable to the facts of the present case since the same had been passed in a context where the Advocate had entered into a compromise or extended a concession without any instructions from his client. The factual aspects extracted above rather lead this Court to infer the contrary and the Advocate is found to be on specific instructions as per his statement recorded and perused of the P.O.A. Similarly, the judgment in case of Sewa Singh (supra) was passed while making a reference to the definition of a ‘party’ under Section 20 of Act of 1987.

21. While proceeding to delve into the said controversy, it is necessary to make a reference to the Section 20 of Act of 1987, which reads thus:

“20. Cognizance of cases by Lok Adalats.—

(1) Where in any case referred to in clause (i) of sub-section (5) of section 19-

(a) the parties thereof agree; or

(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such

settlement; or

(ii) *the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat:*

Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) *Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:*

Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) *Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a*

compromise or settlement between the parties.

- (4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.**
- (5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.**
- (6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.**
- (7) Where the record of the case is returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).”**

22. It is evident from a perusal of Section 20 of Act of 1987 that

consent of the 'party' for reference of a dispute to the Lok Adalat is not a pre-requisite since Section 20 (1) (ii) of Act of 1987 empowers the Courts to make a reference to the Lok Adalat if it is satisfied that the matter is appropriate to be taken cognizance of by the Lok Adalat. Further, the provision of Section 20(4) Act of 1987 deals with the compromise or settlement between the 'parties' and mandates that the Lok Adalat is to be guided by the principles of justice, equity, fair play and other legal principles. The interpretation of term "Party" to mean only as the 'litigant' has been the foundation of the judgment in the matter of Sewa Singh (supra).

23. The word "party" has not been defined in Act of 1987 and has to be understood in the context in which the same has been used. The ordinary meaning of a "party" as extracted from Law Lexicon 2nd Edition- 2013 Pg. 3435 reads thus:-

"In relation to any proceedings, the term includes any person who, pursuant to or by virtue of rules of court or any other statutory provision, has been served with notice of, or has intervened in, proceedings. It may mean 'person' or it may mean plaintiffs or defendants collectively.

In a representative action, the term 'party' includes a person who is represented even though he is not named on the record."

24. It is evident from a perusal of the said meanings that a party has

to be understood in the context of the litigant before the Court in a proceeding.

25. The question as to whether the use of the express provision ‘party’ would mean that only the litigant has to appear in person or he can also appear through his representative or not, the inter-play of The Powers of Attorney Act, 1882 read with the provisions of the Contract Act is also required to be seen. As per provisions of The Powers of Attorney Act, 1882, a party/executant of a power of attorney can empower his attorney to do all such acts for and on his behalf or entrust the attorney to do on his behalf which such party may not be able to do in person.

26. As per Section 2 of The Powers of Attorney Act, 1882, the executant of a power of attorney empowers the person in whose favour the authority has been executed to do acts which shall be as effectual in law as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor himself.

27. The judgment passed in the matter of Sewa Singh (supra) does not take into consideration the scope, applicability and the effect of Section 2 of the Powers of Attorney Act, 1882, wherefrom, the power is derived by the representing Advocate. The relevant extract reads thus:-

“2. Execution under power-of-attorney.—

The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and

every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.”

28. It is not in dispute that the execution of the aforesaid power of attorney is neither denied nor disputed by the petitioner even in the present writ petition. Hence, it cannot be said that a compromise would be deemed to be bad in case the litigant does not appear in person. Such a restrictive meaning would defeat the very object of The Legal Services Authorities Act, 1987. It would not have been intended by the legislature that the litigant must appear in person ‘only’ for proceedings under The Legal Services Authorities Act, 1987 as it would add to the hardship of the litigant rather than making it convenient for him. It tends to annul the substantive power conferred on the Advocate by virtue of a legal document executed under the Power of Attorney Act, 1882. It is imperative that all statutes and statutory provisions need to be harmoniously construed so as to make them workable. A Court of law needs to be conscious of legal enforceability of such documents and the authority conferred by it. At the same time, it must be kept in mind that a lawyer, while appearing on behalf of a client, does so keeping in mind the best interest of the client. Any act of dissatisfaction against a statement/compromise made by a lawyer cannot subsequently be

impugned or be alleged as a dishonest act merely because one of the parties feels dis-satisfied or may have been mis-advised about possibility of a higher compensation.

29. An Advocate having made a statement before a Lok Adalat, such statement is deemed to have been made in the best interest and for furthering the interest client unless established to the contrary. Any act of retracting a statement, after having made so, on the basis of a subsequent mis-advice is an adventure by a litigant which ought not to be protected or promoted as the same is likely to defeat the very object of the Lok Adalat.

30. Since the aforesaid issues have not been dealt with by this Court in the earlier matter of Sewa Singh (supra), I find that the judgment is *per incuriam* as it does not take into consideration the scope of The Powers of Attorney Act, 1882, wherefrom the Advocate derives his authority.

31. It is evident that filing of the present writ petition is a mis-adventure and is probably on account of a mis-advice rendered and based on misplaced dis-satisfaction against a settlement, which is now reflected through the institution of the instant petition alleging lack of instructions to the Advocate ignoring the express Clause of the Vakalatnama.

32. The present writ petition is dismissed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

23.01.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No